

AGENDA ITEM
February 7, 2016

Subject: Frank E. Peters Golf Course Irrigation Project

Department: Parks & Recreation

Bids were received for the Frank E. Peters Golf Irrigation Project on Monday, January 30, 2017. Three companies submitted bids as listed below:

Name	Location	Base Bid (HPDE)	Alterative #1 (PVC)
Midwest Irrigation, LLC	East Dubuque. IL	\$696,800.00	\$645,200.00
McInroy Construction, LLC	Nevada, MO	\$768,522.00	\$716,591.00
Duininck, INC	Prinsburg, MN	\$974,000.00	\$973.000.00

The low bidder Midwest Irrigation has been reviewed by Staff with the Alterative #1 bid preferred. The Alterative #1 is a Hybrid system with PVC main waters lines instead of HPDE. Using PVC pipe will allow city crews to repair and maintain without specialized tools and equipment.

BILL NO. 2017-004

ORDINANCE NO. 8137

**A SPECIAL ORDINANCE OF THE CITY OF NEVADA, MISSOURI,
ACCEPTING THE BID AND AUTHORIZING THE EXECUTION OF AN
AGREEMENT WITH MIDWEST IRRIGATION, LLC FOR THE
CONSTRUCTION OF THE FRANK E. PETERS GOLF COURSE IRRIGATION
PROJECT.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEVADA,
MISSOURI THAT:**

Section 1. The City Council finds and determines that it is appropriate to accept the low bid of \$645,200.00 submitted by Midwest Irrigation, LLC, East Dubuque, Illinois for the construction of the Frank E. Peters Golf Course Irrigation Project.

Section 2. The City Manager is hereby authorized and directed, to execute a contract with the lowest and best bidder aforesaid, binding and obligating this municipality to pay the contractor their bid prices in conformity with the plans and specifications in the contract documents.

Section 3. This ordinance shall be in full force and effect from and after its passage and adoption.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Nevada, Missouri on this 21st day of February, 2017.

Brian L. Leonard, Mayor

(seal)
ATTEST:

Johnna Williams, Deputy City Clerk

**AGREEMENT FOR
CONSTRUCTION SERVICES BETWEEN**

**CITY OF NEVADA, MO - OWNER
And
MIDWEST IRRIGATION, LLC, EAST DUBUQUE, ILLINOIS**

THIS AGREEMENT, is made this 21st day of February, 2017, by and between the Owner, and the Contractor named in the preamble hereto,

WITNESSETH:

That **WHEREAS** the Owner plans to complete the maintenance/construction project it describes as:

Install a new irrigation system for the Frank E Peters Municipal Golf Course per plans.

And **WHEREAS**, Contractor will perform maintenance work for the owner as contemplated by the outline of Specifications/Special Conditions attached hereto, setting forth the work to be done, and shall consult and confer with the **Owner's Representative** assigned supervisory oversight of the proposed project, whose name, address and contact numbers are as follows:

**Harold Gragg, Twin Lakes Supervisor
110 S Ash, Nevada Missouri 64772
hgragg@nevadamo.gov
417-684-7329**

NOW THEREFORE, in consideration of the mutual covenants set out herein, the parties agree as follows:

Phase I – Design and Development of Contract Documents

1. **Responsibilities.** The Owner has developed a statement of the work to be performed as set forth in the Specifications/Special Conditions attached hereto, which are agreed by the parties to reasonably and fairly outline and describe the parameters of the work to be done.
2. **Performance and Payment Bonds – Shop Drawings.** The Owner requires performance and payment bonds which will be obtained at the cost of the contractor and maintained on file with the Owner during the construction period. The Owner may require shop drawings from the contractor and/or any proposed sub-contractor or supplier if owner deems it relevant and helpful to fairly conclude the obligations of the agreement.
3. **Contract Documents.** The term "contract documents" means and includes the following:

- a. This Agreement, the Instructions to Bidders and the Contractor's Bid
- b. Payment bond - form provided by Owner
- c. Performance bond - form provided by Owner
- d. General Conditions provided by Owner
- e. Specifications/ Special Conditions for Work to be Performed
- f. Notice to Proceed
- g. Schedule of Prevailing Hourly Wage Rates
- h. Change Orders, if any, approved by both parties
- i. Additional Drawings and/or submittals approved by Owner
- j. Any contract addenda mutually approved by the parties
- k. Such shop drawings as are hereafter approved

4. **Approval of Plans and Specifications and Payment of Obligation.** The Parties agree that the Specifications/Special Conditions are adequate to describe the work under this Agreement. They may be clarified as deemed necessary by the Owner's Representative and may be enlarged, restricted or withdrawn by Change Order issued by Owner. Payment requests will be filed upon completion of the work and reviewed and as appropriate approved for payment by the Owner's Representative consistent with the procurement policies of the Owner. An order to proceed will be issued upon approval and execution of this agreement.

5. **Construction and Protection of the Property.** Construction will be undertaken by Contractor following execution of the contract documents allowing a reasonable period to marshal men, materials and equipment at the site. The parties agree to allow 10 calendar days for marshalling on this project. The Contractor will take necessary and reasonable precautions to avoid damage to the building by inclement weather during the period of construction, such as but not limited to covering any open or leaking portions of the roof when work ends at the end of the day until work resumes on the next work day.

6. **Obligation of Contractor.** The Contractor will furnish and pay all costs of all materials, supplies, tools, equipment labor, and other services necessary for the work and completion of the maintenance and repair project described in the specifications. Contractor will comply with all applicable federal and state laws and regulations and will abide by the applicable wage-rate determination, which has been provided by the Owner which is expressly made an obligation of this Agreement.

- a. Before the Contract is let, owner has requested on form PW-2 the Annual Wage Order from the Department of Labor Standards (DLS), form PW-2. 290.250 and 290.325, RSMo.
- b. Not less than the prevailing hourly rate of wages, as set out in the Wage Order shall be paid to all workers performing work under the contract. 290.250, RSMo.
- c. The contractor will forfeit a penalty to the owner of \$100 per day or portion of a day for each worker that is paid less than the prevailing rate for any work done under the contract by the contractor or by any subcontractor. 290.250, RSMo and 8 CSR 30-3.010 to 3.060.

- d. The contractor and all subcontractors must require all on site employees to complete the ten-hour construction safety training program required under Section 292.6745, RSMo, unless they have previously completed the program and have documentation of having done so.
- e. The Contractor will forfeit a penalty to the Owner of \$2,500 plus an additional \$100 for each employee employed by contractor or subcontractor, for each calendar day, or portion thereof, such employee is employed without the required training. 290.262.10 RSMo and 8 CSR 30-3.010[3].
- f. Before final payment can be made, the contractor and all subcontractors must file their affidavit of compliance (form PW-4) with the Owner 290.290 and 290.325, RSMo. These forms must be faxed to the DLS, Jefferson City, Missouri, (573)-751-3721.

7. **Designation of Owners Inspector.** At any time Owner's Representative may designate a person other than himself to act as the Resident Project Representative and Inspector. The responsibilities may be assigned to different persons and those persons may be replaced or substituted from time to time as obligations of the Owner may permit. In the event of conflict between the Owner's Representative and the Contractor may be appealed to the Chief Executive Officer of the Owner, whose decisions will be final and binding on the Contractor.

8. **Payments.** The Owner will pay to the Contractor for construction services compensation as provided in paragraph 4 above.

9. **Heirs, Successors & Assigns, etc.** This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors and assigns.

10. **Assignment and Sub-Contractors.** This Agreement may not be assigned by the Contractor and the Contractor cannot utilize sub-contractors unless specifically approved by Owner in writing and unless any such sub-contractors provide insurance coverage as required by the General Contractor.

11. **Conflict in Terms.** In the event of conflict between components of the contract documents, the agreement and general conditions will prevail unless specifically amended by mutually approved change orders and/or contract addenda. In the event of a dispute, the interpretation of the Owner's Chief Administrative Officer is binding on the parties.

12. **Integration Clause.** The contract documents constitute the entire agreement, understanding, and obligation between the parties. No oral or verbal understanding or arrangement not reduced to writing and mutually approved shall have any force or effect.

13. **Execution of Agreement.** This agreement will be executed only upon the express approval of the Owner's Governing Body, in conformity with the procurement ordinances of the Owner.

14. **Commencement-Completion-Liquidated Damages.** The Contractor will commence the work required by the contract documents immediately when the notice to proceed is given, after allowing for any marshalling time provided for in paragraph 5, above, will complete the same within **120 calendar days** after the date of the Notice to Proceed, unless the period for completion is extended by change order approved by all parties. This time allocation includes the marshalling time provided for herein. In the event the Contractor is assessed liquidated damages liquidated damages shall be the sum of \$250 per day.

15. **Total Contract Price.** The Contractor will be paid compensation constituting the Total Contract Price which, for the project which is:

\$645,200.00

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement in multiple copies each of which shall be deemed an original on the date first above written.

(SEAL)

**CITY OF NEVADA, MISSOURI -
OWNER**

By: _____
J.D. Kehrman, City Manager

ATTEST:

Johnna Williams, Deputy City Clerk

- (SEAL)

MIDWEST IRRIGATION, LLC

By: _____
Peter D. Beaves, Manager

ATTEST:

Corporate Secretary

PAYMENT BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

MIDWEST IRRIGATION, LLC

A corporation hereinafter called PRINCIPAL, and

(Name of Surety)

(Address of Surety)

are held and firmly bound unto Owner:

CITY OF NEVADA, MISSOURI
110 S. Ash Street
Nevada, MO 64772

and unto all persons, firms, and corporations who or which may furnish labor, or who furnish materials to perform as described under the Contract and to their successors and assigns in the total aggregate penal sum of FORTY EIGHT THOUSAND NINE HUNDRED AND SIXTY DOLLARS (\$48,960.00) in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

The Condition of This Obligation is such that whereas, the Principal entered into a certain Contract with the Owner, dated the ____ day of _____ 2017, to which this bond is attached for the construction described in said contract;

Now Therefore: If the Principal shall promptly make payment to all persons, firms, and corporations furnishing materials for or performing labor in the prosecution of the work provided for by such Contract, and any authorized extensions or modifications thereof, include all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work and for all labor cost incurred in such work including that by a Sub-Contractor, and to any mechanic or materialman lienholder whether it acquires its lien by operation of State or Federal law; then this obligation shall be void, otherwise to remain in full force and effect.

Provided, that beneficiaries or claimants hereunder shall be limited to the Sub-Contractors, and person, firms and corporations having a direct Contract with the Principal or its Sub-Contractors.

Provided further, that said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Contract or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension or time, alterations or additional to the terms of this Contract or to the work or to the specifications.

Provided further, that no suit or action shall be commenced hereunder by any claimant: (a) Unless claimant, other than one having a direct Contract with the Principal, shall have given written notice to any two of the following: the Principal, the Owner or Surety above named within ninety (90) days after such

claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal Owner, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. (b) after the expiration of one (1) year following the date of which Principal ceased work on said Contract, is being understood however, that if any limitation embodied in the bond is prohibited by any law controlling the construction thereof, such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

Provided Further, that it is expressly agreed that the bond shall be deemed amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the Contract price more than 20 percent, so as to bind the Principal and the Surety to the full and faithful performance of the Contract as so amended. The term "Amendment", wherever used in the bond, and whether referring to the bond, the Contract or the loan documents shall include any alteration, addition, extension, or modification of any character whatsoever.

Provided Further, that no final settlement between the Owner and the Contractor shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

In Witness Whereof, this instrument is executed in 5 or more counterparts, each one of which shall be deemed a duplicate original, the date and year first above written.

MIDWEST IRRIGATION, LLC

(SEAL)

By: _____

Peter D. Beaves, Manager

ATTEST:

Principal's Secretary

Full name of Surety

By: _____

Attorney in Fact for Surety
Power to Attorney attached

Note: Date of Bond must not be prior to date of Contract.
If Contractor is partnership, all partners must sign Bond.
Surety executing bond must appear on the Treasury Department's most current list
(Circular 570, as amended) and be authorized to transact business in Missouri.
Power of Attorney must be attached and dated the date of bond execution.

PERFORMANCE BOND

KNOW ALL PERSONS BY THESE PRESENTS: that

MIDWEST IRRIGATION, LLC

A corporation hereinafter called PRINCIPAL, and

(Name of Surety)

(Address of Surety)

are held and firmly bound unto Owner:

CITY OF NEVADA, MISSOURI
110 S. Ash Street
Nevada, MO 64772

hereinafter called OWNER, in the total aggregate penal sum of **\$645,200.00** in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns. Jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the ____ day of _____, 2017, a copy of which is attached hereto and made a part hereof for the construction of:

Install a new irrigation system per plans for the Frank E Peters Municipal Golf Course

NOW, THEREFORE, if the Principal shall well, truly, and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the SURETY and during the one year guaranty period and if the PRINCIPAL shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void, otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said SURETY, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to WORK to be performed thereunder or the SPECIFICATIONS accompanying same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such charge, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that IT IS EXPRESSLY agreed that the BOND shall be deemed

amended automatically and immediately, without formal and separate amendments hereto, upon amendment to the Contract not increasing the contract price more than 20 percent, so as to bind the PRINCIPAL and the SURETY to the full and faithful performance of the CONTRACT as so amended. The term "Amendment" wherever used in this BOND, and whether referring to this BOND, the Contract or the Loan Documents shall include any alteration, addition, extension, or modification of any character whatsoever.

IN WITNESS WHEREOF, this instrument is executed in five counterparts, each one of which shall be deemed an original, this the _____ day of _____, 2017.

MIDWEST IRRIGATION, LLC

(SEAL)

By: _____
Peter D. Beaves, Manager

ATTEST:

Principal's Secretary

Full name of Surety

By: _____
Attorney in Fact for Surety
Power to Attorney attached

Note: Date of Bond must not be prior to date of Contract.
If Contractor is partnership, all partners must sign Bond.
Surety executing bond must appear on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in Missouri.
Power of Attorney must be attached and dated the date of bond execution.

GENERAL CONDITIONS
For Use by Local Government - Local Funds Only
Form updated 08-09-16

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| 1. Definitions | 17. Subsurface Conditions - where applicable |
| 2. Additional Instructions and Detail Drawings | 18. Suspension of Work, Termination and Delay |
| 3. Schedules, Reports and Records | 19. Payments to Contractor/Builder |
| 4. Drawings and Specifications | 20. Acceptance of Final Payment as Release |
| 5. Shop Drawings | 21. Insurance |
| 6. Materials, Services and Facilities | 22. Contract Security |
| 7. Inspection and Testing | 23. Assignments |
| 8. Substitutions | 24. Indemnifications |
| 9. Patents | 25. Separate Contracts |
| 10. Surveys, Permits, Regulations | 26. Subcontracting |
| 11. Protection of Work, Property, Persons | 27. Owner's Authority |
| 12. Supervision by Contractor | 28. Land and Rights-of-Way |
| 13. Changes in the Work | 29. Guaranty |
| 14. Changes in Contract Price | 30. Remedies |
| 15. Time of Completion and Liquidated Damages | 31. Taxes |
| 16. Correction of Work | 32. Prevailing Hourly Wage Rates |
| | 33. Forms |

1. DEFINITIONS

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated and shall be applicable to both the singular and plural thereof:

1.2 ADDENDA - Written or graphic instruments issued prior to the execution of the CONTRACT which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 A/E as used in this agreement refers to any ARCHITECT &/OR ENGINEER, if applicable, and if none to the OWNER'S REPRESENTATIVE - The person, firm or corporation selected by Owner to assist in developing Plans and if needed specifications and administering the contract.

1.4 BID - The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.5 BIDDER - Any person, firm or corporation submitting a BID to the owner for a portion of the WORK or Materials.

1.6 BONDS - Bid, Performance and Payment Bonds and other instruments of surety, furnished by the CONTRACTOR and the CONTRACTOR'S surety in accordance with the CONTRACT DOCUMENTS.

1.7 CHANGE ORDER - A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.8 CONTRACT DOCUMENTS — The CONTRACT DOCUMENTS as defined in the CONTRACT.

1.9 CONTRACT PRICE — The compensation payable to the CONTRACTOR under the terms and conditions of the CONTRACT for Services of CONTRACTOR.

1.10 CONTRACT TIME — The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.11 CONTRACTOR — The person, firm, or corporation with whom the OWNER has executed the CONTRACT - sometimes called herein "Builder".

1.12 DRAWINGS — The parts of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by A/E.

1.13 FIELD ORDER — A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the Owner to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD — The written notice of the acceptance of the BID from the OWNER to the CONTRACTOR.

1.15 NOTICE TO PROCEED — Written communication issued by the OWNER to the CONTRACTOR authorizing him/her to proceed with the WORK and establishing the date for commencement of the WORK.

1.16 OWNER — A public or quasi-public body or authority, corporation, association, partnership, or an individual for whom the WORK is to be performed. On occasions where inspection, progress approvals and administrative issues are concerned, reference to OWNER may mean the Resident Project Representative ("RPR")

1.17 PROJECT — The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE (or "RPR") — The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS — All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS — a part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR — An individual, firm or corporation having a direct CONTRACT with CONTRACTOR or with any SUBCONTRACTOR for the performance of a part of the WORK at the site.

1.22 SUPPLEMENTAL GENERAL CONDITIONS — Additions to the General Conditions if any, agreed to by the owner and the CONTRACTOR or any special provisions imposed by applicable state laws, or special requirements for this PROJECT.

1.23 SUPPLIER — Any person or organization who supplies materials or equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.24 WORK — All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.25 WRITTEN NOTICE — Any notice to any party of the CONTRACT relative to any part of this CONTRACT in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at their last given address, or delivered in person to said party or their authorized representative on the WORK.

2. ADDITIONAL INSTRUCTIONS AND DETAIL DRAWINGS

2.1 The BUILDER will be furnished adequate instructions and concepts to permit detailed plans and specifications or proposal to be prepared.

2.2 The finally developed drawings and specifications or bid proposal, at the option of the Owner's Representative, will become a part of the CONTRACT. The CONTRACTOR shall carry out the WORK in accordance with the CONTRACT DOCUMENTS.

3. SCHEDULES, REPORTS AND RECORDS

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are reasonably requested from time to time and as required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which the CONTRACTOR proposes to carry on the WORK, including dates at which the various parts of the WORK will be started, estimated date of completion of each part and, as applicable:

- 3.2.1 The dates at which special detail drawings (if any) will be required; and
- 3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.
- 3.3 The CONTRACTOR shall also submit a schedule of payments that the CONTRACTOR anticipates will be earned during the course of the WORK.

4. PROPOSAL, DRAWINGS AND SPECIFICATIONS

- 4.1 The intent of the PROPOSAL, DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental WORK necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.
- 4.2 In case of conflict between the PROPOSAL, DRAWINGS and SPECIFICATIONS, ANY SPECIFICATIONS PROVIDED BY THE OWNER'S REPRESENTATIVE, IN PLANS OR WRITTEN COMMUNICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over general DRAWINGS.
- 4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the OWNER'S REPRESENTATIVE, who shall promptly attend to the correction such inconsistencies or ambiguities. WORK done by the BUILDER after discovery of such discrepancies, inconsistencies or ambiguities shall be done at the BUILDER'S risk.

5. SHOP DRAWINGS

- 5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The Owner shall promptly review all SHOP DRAWINGS. The Owner's approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.
- 5.2 When submitted for the Owner's review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the shop drawings and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.
- 5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the Owner. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the Owner.

6. MATERIALS, SERVICES AND FACILITIES

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete and deliver the WORK within the specified time. All materials and project components shall be new, unless otherwise specifically agreed in writing.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the Owner.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale CONTRACT or other CONTRACT by which an interest is retained by the seller when a Payment Bond is not required by the CONTRACT DOCUMENTS.

7. INSPECTION AND TESTING

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at the CONTRACTOR'S expense any testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the Owner timely notice of readiness. The CONTRACTOR will then furnish the Owner the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the Owner shall not relieve the CONTRACTOR from the obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The Owner's representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating agency shall be permitted to inspect all WORK, materials, payrolls, records or personnel, invoices of materials and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the Owner must, if requested by the Owner be uncovered for the Owner's observation and replaced at the CONTRACTOR'S expense.

7.8 If the Owner considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the Owner's request, will uncover, expose or otherwise make available for observation, inspection or testing as the Owner may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction, if, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. SUBSTITUTIONS

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS and SPECIFICATIONS by reference to brand name or catalog numbers, it shall be understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalog number, and if, in the opinion of the Owner, such material, article or piece of equipment is of equal substance and function to that specified, the Owner may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. PATENTS

9.1 The CONTRACTOR shall pay all applicable royalties and license fees, and shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or product of a particular manufacturer or manufacturers is specified, however, if the CONTRACTOR has reason to believe that the design, process or product specified

is an infringement of a patent, the CONTRACTOR shall be responsible for such loss unless the CONTRACTOR promptly gives such information to the Owner.

10. SURVEYS, PERMITS, REGULATIONS

10.1 Where applicable, the OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pipe locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, shall be charged with the resulting expense and shall be responsible for any mistake that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, the CONTRACTOR shall promptly notify the Owner in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. PROTECTION OF WORK, PROPERTY AND PERSONS

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. The CONTRACTOR will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The CONTRACTOR shall comply with all pertinent provisions of the Occupational Safety and Health Administration (OSHA) and any State Safety and Health agency requirements

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. The CONTRACTOR will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. The CONTRACTOR will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused, directly or indirectly, in whole or part, by the CONTRACTOR, any

SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone of whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER, of the Owner or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instructions or authorization from the Owner, shall act to prevent threatened damage, injury or loss. The CONTRACTOR will give the Owner prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. SUPERVISION BY CONTRACTOR

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR or the CONTRACTOR'S representative at the site. The supervisor shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. CHANGES IN THE WORK

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the CONTRACT. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER. CHANGE ORDER shall be used to adjust quantities of installed units which are different than those shown in the BID SCHEDULE because of final measurements. Final measurements shall not be considered changes in the WORK. Final measurements will determine compensation to the CONTRACTOR based on unit price shown in BID SCHEDULE.

13.2 The Owner also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the Owner unless the CONTRACTOR believes that such FIELD ORDER entitles the CONTRACTOR to a change in CONTRACT PRICE or TIME, or both, in which event the CONTRACTOR shall give the Owner WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. CHANGES IN CONTRACT PRICE

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below.

- a. Unit prices previously approved
- b. An agreed lump sum

15. TIME FOR COMPLETION AND LIQUIDATED DAMAGES

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the Agreement for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS. For good cause including delay occasioned by failure of other component contractors to have the site ready for contractor's work, the contractor may be granted an extension of time.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a CONTRACT with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and abnormal and unforeseeable weather; and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. CORRECTION OF WORK

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the Owner for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and re-execute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. SUBSURFACE CONDITIONS - WHERE APPLICABLE.

17.1 The CONTRACTOR, before bidding the PROJECT, has the responsibility to become familiar with the site of the PROJECT and the conditions under which WORK will have to be performed during the construction period.

17.2 Excavating for foundations of surface structure: buildings, bridges, tanks, towers, retaining walls and other types of surface structures.

17.2.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.2.2 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS; or

17.2.3 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2.4 The OWNER shall promptly investigate the conditions, and if it is found that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereinafter shall not be allowed unless the required WRITTEN NOTICE has been given; provided that the OWNER may, if the OWNER determines the facts so justify, consider and adjust any such claims asserted before the date of the final payment.

17.3 Excavating for below-surface structures: water mains, sewers, power and telephone cables and other types of below surface structures.

17.3.1 No extra compensation will be paid for rock excavation or varying geologic features encountered on the PROJECT, unless so shown as a bid item in the Bid Schedule for the bid.

17.3.2 If man-made hazards are encountered by the CONTRACTOR, excluding utilities, which are not visible from the surface, such as buried concrete foundations, buried garbage dumps that cannot be by-passed and requires additional work, then the procedure set forth in 17.2.4 will be followed.

18. SUSPENSION OF WORK, TERMINATION AND DELAY

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR, by WRITTEN NOTICE to the CONTRACTOR and the OWNER which shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged a bankrupt or insolvent, or makes a general assignment for the benefit of its creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of its property, or if CONTRACTOR files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or disregards the authority of the OWNER, or otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and its surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery thereon owned by the CONTRACTOR and finish the WORK by whatever method the OWNER may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the Owner and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of WRITTEN NOTICE to the CONTRACTOR, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the CONTRACT. In such case the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the OWNER fails to act on any request for payment within thirty (30) days after it is submitted, or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the Owner or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the Owner has failed to act on a request for payment or if the OWNER has failed to make any approved payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER stop the WORK until paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT price or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER.

18.7 The OWNER, without terminating the service of the CONTRACTOR or WRITTEN NOTICE to the Surety, may withhold — without prejudice to the rights of the OWNER under the terms of the CONTRACT — or on account of subsequently discovered evidence, nullify the whole or part of any approved partial payment estimate to such extent as may be necessary to protect the OWNER from loss on account of: defective work not remedied, claims filed or reasonable evidence indicating probable filing of claims, failure of CONTRACTOR to make payments properly to SUBCONTRACTORS or for material or labor, a reasonable doubt that the WORK can be completed for the balance then unpaid, damage to another CONTRACTOR and performance of WORK in violation of the terms of the CONTRACT DOCUMENTS.

19. PAYMENT TO CONTRACTOR

19.1 Payment will be made to the contractor as agreed in the contract, frequently anticipated to be a lump sum paid upon completion and filing of lien waivers and wage rate assurances. Lien waivers may be waived; however, will be provided if requested by OWNER'S representative.

Where period payments are anticipated by the agreement, At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the Owner a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the Owner may reasonably require. The Owner will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing approval of payment, and present the partial payment estimate to the OWNER's Finance Director for payment, or return the partial payment estimate to the CONTRACTOR indicating in writing the reasons for refusing to

approve payment. In the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within five (5) days of presentation of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate less the retainage. The retainage shall be an amount equal to 10% of said estimate until completion and acceptance of the WORK. The 10% retainage may be reduced by CHANGE ORDER if completion and acceptance of the WORK is delayed due to valid circumstances and the WORK is usable for its intended purpose by the OWNER. If the reduction in the retainage is approved the remaining retainage shall be an amount sufficient to complete the WORK.

19.2 The request for payment will not include an allowance for the cost of major materials and equipment delivered to the job or stored at the site unless the same are secured behind locked doors. Payment does not pass title or relieve the CONTRACTOR of his responsibility for the safe keeping of this material and equipment until final acceptance of the project.

19.3 Prior to completion and acceptance of the WORK, the OWNER, and with the concurrence of the BUILDER, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing WORK not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK by the owner, the Builder will provide the Owner with a certificate from the Owner's Representative or Architect, as applicable attached to the final payment request that the WORK has been completed in full compliance with the terms and conditions of the CONTRACT DOCUMENTS and customary lien waivers and assurances of payment of prevailing wages to employees. The entire balance found to be due the BUILDER, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the BUILDER within thirty (30) days of completion and acceptance of the WORK by Owner. The Owner's certificate of acceptance will be memorialized on the document entitled "Consultant's Certification for Acceptance and Final Payment" which is to be executed by Builder.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen and furnishers of machinery and parts thereof, equipment, tools and all supplies incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed

in accordance with the terms with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, the CONTRACTOR'S Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the OWNER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR. The legal rate of interest shall be as specified in RSMo 408.020.

20. ACCEPTANCE OF FINAL PAYMENT AS RELEASE

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however final or otherwise, shall not release the CONTRACTOR or its sureties from any obligations under the CONTRACT DOCUMENTS or the Performance and Payment BONDS.

21. INSURANCE

21.1 **The CONTRACTOR shall purchase and maintain insurance** as will protect it from claims set forth below which may arise out of, or result from, the CONTRACTOR'S execution of the WORK, whether such execution be by the CONTRACTOR, any SUBCONTRACTOR, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of employee;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 **Certificates of Insurance** acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverage afforded under the policies will not be cancelled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 **Liability Insurance:** The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense, during the CONTRACT time, liability insurance as hereinafter specified:

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting the CONTRACTOR from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by the CONTRACTOR or by any SUBCONTRACTOR employed by the CONTRACTOR or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR employed by the CONTRACTOR and also to include coverage for Products and/or Completed Operations. Insurance shall be written with a combined single limit for injury and/or property damage liability or not less than \$2,000,000 per occurrence and with an aggregate of not less than \$2,000,000. Coverage will include owned, non-owned and hired vehicles on and off the job and will include a "per project" endorsement.

21.3.2 Where the WORK to be performed under the CONTRACT DOCUMENTS involves excavation or other underground WORK or construction, the Property Damage Insurance provided shall cover all injury to or destruction of property below the surface of the ground, such as wires, conduits, pipes, mains, sewers, etc., caused by the CONTRACTOR'S operations, Property Damage Insurance shall also cover the collapse of, or structural injury to, any buildings or structure on or adjacent to the OWNER'S premises, or the injury to or destruction of property resulting therefrom, caused by the removal of other buildings, structures, or supports, or by excavations below the ground where the construction of a new structure or the demolition of an existing structure involves any of the foregoing designated hazards and in all cases where the CONTRACT provides for alternations in, additions to, or the underpinning of an existing structure or structures. Before any blasting will be permitted, the CONTRACTOR shall be required to obtain a Blasting Endorsement on his Public Liability and Property Damage Insurance Policy.

21.3.3 The CONTRACTOR shall secure CONTRACTOR'S Contingent or Protective Liability and Property Damage to protect the CONTRACTOR from any and all claims arising from the operations of SUBCONTRACTOR employed by the CONTRACTOR. The minimum amounts of such insurance shall be as required for Public Liability and Property Damage Insurance.

21.3.4 **Owner's Protective (OCP):** If requested by the Owner the CONTRACTOR shall purchase, maintain and deliver to the OWNER a Protective Liability Policy in the name of the OWNER for operations of the CONTRACTOR or any SUBCONTRACTOR in connection with the execution of the CONTRACT. The minimum amounts of such insurance shall be the same as

required for Public Liability and Property Damage Insurance. As an alternative, the Owner's Representative may permit the CONTRACTOR to name the owner as an additional insured on his comprehensive general liability coverage and provide certification of the same. The OWNER may waive this requirement, but is not required to do so.

21.3.5 Owned, Non-owned and Hired Autos. The CONTRACTOR shall maintain Automobile Public Liability and Property Damage Insurance to protect the CONTRACTOR from any and all claims arising from the use of the following in the execution of the WORK: a) CONTRACTOR'S own automobiles and trucks. b) Hired automobiles and trucks. c) Automobiles and trucks not owned by the CONTRACTOR. The insurance shall cover the use of the automobiles and trucks both on and off the site of the PROJECT. The minimum amounts of such insurance shall be the same as required for Public Liability and Property Damage Insurance.

21.4 Missouri Worker's Compensation Coverage. The CONTRACTOR shall procure and maintain, at the CONTRACTOR'S own expense during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the WORK is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all the CONTRACTOR'S employees at the site of the PROJECT and in case any WORK is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous WORK under this CONTRACT at the site of the project is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for the protection of its employees not otherwise protected.

21.5 Builder's Risk. Unless waived by the Owner's Representative, The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured, as their interests may appear, the OWNER, CONTRACTOR, SUBCONTRACTORS. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT. Because Builder's Risk coverage applies to structures, where the project does not involve a structure, the contractor will provide an installation floater or inland marine policy to cover materials and appliances of any type delivered to the job and not installed.

22. CONTRACT SECURITY

22.1 The CONTRACTOR shall within fifteen (15) days after the receipt of the NOTICE OF Proceed, furnish the OWNER with a Performance BOND and a Payment BOND in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons

supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal Bonds, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payment shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. ASSIGNMENTS

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign, or otherwise dispose of the CONTRACT or any portion thereof, or of any right, title or interest therein, or any obligations thereunder, without written consent of the other party.

24. INDEMNIFICATION

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and its agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or any of its agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the OWNER, its agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. SEPARATE CONTRACTS

25.1 The OWNER reserves the right to let other CONTRACTS in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for

the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate the WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the OWNER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT or the OWNER may let other CONTRACTS containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such CONTRACTS (or the OWNER, if the OWNER is performing the additional WORK) reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate the WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves it in additional expense or entitles it to any extension of the CONTRACT TIME, the CONTRACTOR may make a claim thereof as provided in Sections 14 and 15.

26. SUBCONTRACTING

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of its SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as the CONTRACTOR is for the acts and omissions of persons directly employed by it.

26.3 The CONTRACTOR shall cause appropriate provisions to be inserted in all SUBCONTRACTS relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and give the CONTRACTOR the same power as regards terminating any SUBCONTRACT that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.4 Nothing contained in the CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. OWNER'S AUTHORITY

27.1 The OWNER shall act as its representative during the construction period and shall decide questions which may arise as the quality and acceptability of materials furnished and WORK performed, and shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased

manner. The Owner's representatives will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship, and execution of the WORK. Inspections may be at the factor or fabrication plant of the source of the material supply.

27.3 The OWNER will not be responsible for the construction means, controls, techniques, sequences, procedures or construction safety.

27.4 The Owner shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

27.5 The OWNER shall be responsible for obtaining an acknowledgement of the "Consultant's Certification for Acceptance and Final Payment" from the OWNER before the certifications may take effect.

28. LAND AND RIGHT-OF-WAY

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and right-of-way acquired.

28.3 The CONTRACTOR shall provide at its own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. GUARANTEE

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of completion and acceptance of the WORK. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of completion and acceptance of the WORK that the completed WORK is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any other damages that were caused by defects in the WORK. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. In emergency where, in the judgment of the OWNER, delay would cause serious loss or damage, repairs and replacement of defects in the WORK and damage caused by defects may be made without notice being sent to the CONTRACTOR, and the CONTRACTOR shall pay the cost thereof. The Performance BOND shall remain in full force and effect through the guarantee period.

30. REMEDIES

30.1 Except as may be otherwise found in the CONTRACT DOCUMENTS, all claims, disputes, counter-claims, and other matters in question between the OWNER and CONTRACTOR arising out of or related to this CONTRACT or the breach thereof, will be decided by arbitration if the parties hereto mutually agree, or in a court of competent jurisdiction within the state in which the OWNER is located.

31. TAXES

31.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the laws of the place where the WORK is performed.

31.2 A Missouri Sales Tax Exemption is provided for by Missouri State Status 144.062, effective August 28, 1994, which allows for a sales tax exemption to contractors constructing, repairing or remodeling facilities or purchasing personal property and materials to be incorporated into and consumed in the construction of projects for a tax exemption entity. The tax exempt entity shall furnish a signed exemption certification, authorizing such purchases for the construction, repair or remodeling project, to each CONTRACTOR and/or SUBCONTRACTOR. For further information please contact the Missouri Department of Revenue, P. O. Box 840, Jefferson City, MO 65105, telephone (573)751-2836. Enclosed is a form approved by the Missouri Department of Revenue.

32. PREVAILING HOURLY WAGE RATES

32.1 The CONTRACT shall be based upon the required payment by the Contractor of the prevailing hourly rate of wages for each craft or type of workman required to execute the CONTRACT as determined by the Department of Labor and Industrial Relations of Missouri. See Schedule of Prevailing Hourly Wage Rates attached hereto and made a part hereof.

32.2 The BUILDER shall comply in all respects with Sections 290.210 through 290.340 RSMo

32.3 The CONTRACTOR and any SUBCONTRACTOR shall keep an accurate record showing the names and occupations of all workmen employed by him, together with the actual wages paid to each workman, which shall be open to inspection at all reasonable hours by the representatives of the Department of Labor and Industrial Relations of Missouri and the OWNER.

32.4 The CONTRACTOR is advised of the fact that the prevailing hourly rate of wages is subject to change by the Department of Labor and Industrial Relations or by court decision as provided by law during the life of this CONTRACT and such change shall not be the basis of any claim by the CONTRACTOR against the OWNER nor will deductions be made by the OWNER against sums due the CONTRACTOR by reason of such change.

32.5 The "prevailing hours of labor" for all classifications of laborers, workmen and mechanics to be employed in the work are eight hours per day and forty hours per week.

**SPECIAL CONDITIONS
WITH SPECIFICATIONS FOR WORK CONTEMPLATED**

**BY AND BETWEEN
CITY OF NEVADA, MISSOURI - OWNER
and**

MIDWEST IRRIGATION, LLC

Attached hereto are the special conditions and plans and specifications for the work to be performed under this contract.

It is understood that all work will be performed in a workman like manner and the contractor will provide and make reasonable precautions for the safety of the workmen prosecuting the work, and the public in conformity with all applicable federal, state and local rules and regulations, it being recognized that the city and its staff and officials are not versed or trained in such endeavors.

Should a dispute arise as to the workman like status of work performed, the decision of the OWNER'S Representative will prevail and the Contractor will make reasonable efforts to comply.

Attachment: Scope of Work outlined in Request for Bids

NOTICE TO PROCEED

DATE: <month> _____, 2017.

TO: <Business Name>

RE: **REPLACEMENT IRRIGATION SYSTEM FOR TWIN LAKES
SPORTS COMPLEX**

You are hereby notified to commence work in accordance with the AGREEMENT FOR CONSTRUCTION SERVICES dated <month> _____, 2017, on or before _____, 2017, and you are to complete the work within <number of days> consecutive calendar days thereafter (30 days marshalling time is included within the <number of days> days).

(SEAL)

**CITY OF NEVADA, MISSOURI –
OWNER**

By: _____
J.D. Kehrman, City Manager

ATTEST:

Johnna Williams, Deputy City Clerk

ACCEPTED the day and year first above written.

(SEAL)

MIDWEST IRRIGATION, LLC

By: _____
Peter D. Beaves, Manager

ATTEST:

Corporate Secretary